IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 777 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BAVAJI D VALLABHAJATI

Appearance:

1. Criminal Appeal No. 777 of 1991

Mr.I.M. Pandya, APP, for the appellant

MR MAHENDRA K PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/02/2003

ORAL JUDGEMENT

1. The State of Gujarat, in this appeal filed under Section 378 of the Code of Criminal Procedure, has challenged the judgment and order dated July 31, 1991, passed by the learned Judicial Magistrate, First Class, Manavadar, in Criminal Case No. 452 of 1990, by which judgment and order, the respondent came to be acquitted for the offence punishable under Sections 66(i)(b) and 85(1)(3) of the Bombay Prohibition Act, 1949 ('Act' for short).

2. The prosecution case, in short, be summarized as under: P.W.2, Ismail Sidi, was on duty on May 28, 1990 near Gayatri Mandir, Manavadar, between 23 hrs and 5 hrs. During that period, on May 29, 1990, around 2 a.m. the respondent was found in a drunken condition misbehaving in the public place. The respondent was apprehended and the Police Constable, Ismail Sidi, found that foul smell was coming from the mouth of the respondent, which indicated that he had consumed liquor. The gait of the respondent was not stable. P.W.2, Police Constable, Ismail Sidi, lodged First Information Report against the respondent for the offences as stated above. On the basis of the said First Information Report, the respondent was sent for medical examination to the Government Hospital, at Manavadar. P.W.4, Dr. Munshi, Medical Officer of the said Hospital, on physical examination of the respondent, had found that smell of alcohol was coming from the mouth of the respondent, and pupils of the respondent were dilated. Blood sample from the hand of the respondent was taken to find out the contents of alcohol. The said sample of blood was sent to the public analyst at Junagadh. The report indicated that percentage of the alcohol was higher than the prescribed parameter under the Act which indicated that the respondent had consumed alcohol. Charge-sheet came to be filed in the Court of the learned Judicial Magistrate, First Class, Manavadar, where it came to be numbered as Criminal Case No.452 of 1990.

3. After framing the charge, the prosecution had examined Police Constable, Ismail, two independent panchas, and the Doctor who had taken blood sample of the respondent. The two independent panchas had turned hostile. The learned Judicial Magistrate, First Class, Manavadar, found that the Doctor, at the time of collection of blood sample, had not followed the mandatory provisions prescribed under Rule 4 of the Bombay Prohibition (Medical Examination & Blood Test) Rules, 1959, ('Rules' for short), with the result the report of the Chemical Analyser cannot be relied upon to hold the respondent guilty of the above offences. The learned Judicial Magistrate, First Class, had followed the principle laid down by this Court in the case of State of Gujarat vs. Bapuji Savaji, reported in 1990(2) G.L.H.451, for holding that, if the mandatory provisions of Rule 4 of the Rules were not followed scrupulously, the prosecution cannot succeed on the report of the Chemical Analyser which was with regard to collection of sample not according to the Rules. On the basis of the abovereferred to conclusion, the learned Magistrate

acquitted the respondent from the charges framed against him, which has given rise to filing of this appeal by the State of Gujarat.

4. Learned Additional Public Prosecutor, Mr.I.M. Pandya, and learned advocate Mr. Mahendra K. Patel, have taken me through the entire record and proceedings produced at the trial.

5. Having heard the learned advocates for the parties, in my opinion, this appeal can be disposed of shortly on the ground that Rule 4 of the Rules, which is a mandatory provision, has not been duly complied with. As observed by the learned Judicial Magistrate, First Class, the Doctor, at the time of collection of blood sample, had not followed the mandatory provisions prescribed under Rule 4 of the Rules, with the result the report of the Chemical Analyser cannot be relied upon to hold the respondent guilty of the above offences. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judicial Magistrate for acquitting the respondent. In view of the serious lapse on the part of the Medical Officer by not following the mandatory provision at the time of collection of blood sample from the respondent to find out the contents of percentage of alcohol, the prosecution case should fail.

6. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated March 9, 1990 passed by the learned Judicial Magistrate, First Class, Gandhidham, in Criminal Case No.2287 of 1985, is confirmed.

(M.H.Kadri, J.)
(swamy)